

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	<div style="color: red;"> EFILED Document CO Denver County District Court 2nd JD Filing Date: Apr 30 2010 4:14PM MDT Filing ID: 30875110 Review Clerk: Charmaine Bright </div>
<p>PLAINTIFFS: Anthony Lobato, as an individual and as parent and natural guardian of Taylor Lobato and Alexa Lobato; <i>et al.</i></p> <p>vs.</p> <p>DEFENDANTS: The State of Colorado; <i>et al.</i></p>	<div style="text-align: center;"> <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> </div>
<p>Attorneys for Defendants: JOHN W. SUTHERS, Attorney General</p> <p>MONICA MÁRQUEZ, 28950 Deputy Attorney General E-mail: monica.marquez@state.co.us</p> <p>ANTONY B. DYL, 15968* Senior Assistant Attorney General E-mail: tony.dyl@state.co.us</p> <p>CAREY TAYLOR MARKEL, 32987* Senior Assistant Attorney General E-mail: carey.markel@state.co.us</p> <p>ANN H. CISNEROS, 32547* Assistant Attorney General E-mail: ann.cisneros@state.co.us</p> <p>ERICA WESTON, 35581* Assistant Attorney General E-mail: erica.weston@state.co.us</p> <p>NICHOLAS P. HEINKE, 38738* Assistant Attorney General E-mail: nicholas.heinke@state.co.us</p> <p>Office of the Colorado Attorney General 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: (303) 866-2383 Fax: (303) 866-5671 * Counsel of Record</p>	<p>Case Number: 05 CV 4794</p> <p>Div: 9</p>
<div style="text-align: center;"> ANSWER TO PLAINTIFFS' AMENDED COMPLAINT </div>	

Defendants, by and through their counsel, hereby answer Plaintiffs' Amended Complaint ("Complaint"):

INTRODUCTION

1. Defendants admit that Plaintiffs bring this action for declaratory and injunctive relief pursuant to Rules 57 and 65 of the Colorado Rules of Civil Procedure to determine alleged rights under the Colorado Constitution, article IX, section 2 (the Education Clause) and section 15 (the Local Control Clause), but deny that Plaintiffs are entitled to such relief. Defendants further deny the allegations of Paragraph 1 of the Complaint to the extent that they are an inaccurate and incomplete recitation of the Constitution, which is the best evidence of its contents.

2. Defendants deny the allegations of Paragraph 2 of the Complaint and further deny that Plaintiffs have standing to assert claims on behalf of all children of the State of Colorado.

3. Defendants deny the allegations of Paragraph 3 of the Complaint.

4. Defendants deny the allegations of Paragraph 4 of the Complaint.

5. The allegations of Paragraph 5 of the Complaint purport to summarize a report by the Colorado School Finance Project, which is not a part of the Colorado Department of Education or an agent of the State. Defendants deny the allegations of Paragraph 5 to the extent that they are an incomplete or inaccurate summary of the report, which is the best evidence of its contents. Defendants further deny that the report defines the constitutional standards for education and deny the remaining allegations of Paragraph 5.

6. The allegations of Paragraph 6 of the Complaint purport to summarize a report by the Colorado School Finance Project, which is not a part of the Colorado Department of Education or an agent of the State. Defendants deny the allegations of Paragraph 6 to the extent that they are an incomplete or inaccurate summary of the report, which is the best evidence of its contents. Defendants further deny that the report defines the constitutional standards for education and deny the remaining allegations of Paragraph 6.

7. Paragraph 7 of the Complaint mischaracterizes the referenced October 2009 presentation, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 7.

8. Defendants deny the allegations of the first and third sentences of Paragraph 8 of the Complaint. Defendants admit the allegations of the second sentence of Paragraph 8 as it relates to 2003-2007. The fourth sentence of Paragraph 8 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations of Paragraph 8 to the extent that they contain an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 8.

9. Defendants admit that the statistics alleged in Paragraph 9 of the Complaint may be supported by certain reports, but deny that the numbers are definitive. Defendants deny the remaining allegations of Paragraph 9 and deny that the reports are a valid measure of Colorado's expenditures for elementary and secondary school education.

10. Defendants deny the allegations of the first two sentences of Paragraph 10 of the Complaint. As to the third sentence of Paragraph 10, defendants admit that the state of Colorado's 2010-11 budget has been signed into law and state that the state budget speaks for itself. However, defendants lack knowledge sufficient to form a belief as to school districts' final 2010-11 budgets and therefore deny the remaining allegations of the third sentence of Paragraph 10. Defendants deny the allegations of the fourth sentence of Paragraph 10 to the extent that they are an incomplete or inaccurate summary of CDE's projections, which are the best evidence of their contents.

11. Defendants lack knowledge sufficient to form a belief as to the accuracy of Paragraph 11 of the Complaint's speculation as to future events and therefore deny the allegations of Paragraph 11.

12. Defendants deny the allegations of Paragraph 12 of the Complaint.

13. Defendants deny the allegations of Paragraph 13 of the Complaint.

14. Defendants deny the allegations of Paragraph 14 of the Complaint.

15. Defendants deny the allegations of Paragraph 15 of the Complaint.

16. Defendants deny the allegations of Paragraph 16 of the Complaint and further deny that Plaintiffs have standing to assert claims on behalf of groups of parents or students of which they are not a part.

17. Defendants deny the allegations of Paragraph 17 of the Complaint and further deny that Plaintiffs have standing to assert claims on behalf of groups of parents or students of which they are not a part.

JURISDICTION AND VENUE

18. Defendants admit that Plaintiffs bring this action for declaratory and injunctive relief under Rules 57 and 65 of the Colorado Rules of Civil Procedure and the Uniform Declaratory Judgments Law, but deny that Plaintiffs are entitled to such relief.

19. Defendants admit the allegations of Paragraph 19 of the Complaint.

PARTIES

I. Plaintiffs

A. Individual Plaintiffs

20. Defendants lack information sufficient to admit or deny the allegations of the first sentence of Paragraph 20 of the Complaint, and therefore deny them. Defendants admit the allegations of the second sentence of Paragraph 20.

21. Defendants deny the allegations of Paragraph 21 of the Complaint.

22. Defendants lack information sufficient to admit or deny whether many of the Individual Plaintiffs have children who are eligible for programs as alleged in Paragraph 22 of the Complaint, and therefore deny those allegations. Defendants deny the remaining allegations of Paragraph 22.

1. School District No. 14 in the County of Adams

23. Defendants lack information sufficient to admit or deny the allegations of Paragraph 23 of the Complaint, and therefore deny them.

24. Defendants lack information sufficient to admit or deny the allegations of Paragraph 24 of the Complaint, and therefore deny them.

2. Boulder Valley School District No. Re2

25. Defendants lack information sufficient to admit or deny the allegations of Paragraph 25 of the Complaint, and therefore deny them.

26. Defendants lack information sufficient to admit or deny the allegations of Paragraph 26 of the Complaint, and therefore deny them.

27. Defendants lack information sufficient to admit or deny the allegations of Paragraph 27 of the Complaint, and therefore deny them.

**3. Center Consolidated School District No. 26 CT of the
Counties of Sagauche and Rio Grande and Alamosa**

28. Defendants lack information sufficient to admit or deny the allegations of Paragraph 28 of the Complaint, and therefore deny them.

29. Defendants lack information sufficient to admit or deny the allegations of Paragraph 29 of the Complaint, and therefore deny them.

30. Defendants lack information sufficient to admit or deny the allegations of Paragraph 30 of the Complaint, and therefore deny them.

31. Defendants lack information sufficient to admit or deny the allegations of Paragraph 31 of the Complaint, and therefore deny them.

32. Defendants lack information sufficient to admit or deny the allegations of Paragraph 32 of the Complaint, and therefore deny them.

33. Defendants lack information sufficient to admit or deny the allegations of Paragraph 33 of the Complaint, and therefore deny them.

34. Defendants lack information sufficient to admit or deny the allegations of Paragraph 34 of the Complaint, and therefore deny them.

35. Defendants lack information sufficient to admit or deny the allegations of Paragraph 35 of the Complaint, and therefore deny them.

36. Defendants lack information sufficient to admit or deny the allegations of Paragraph 36 of the Complaint, and therefore deny them.

37. Defendants lack information sufficient to admit or deny the allegations of Paragraph 37 of the Complaint, and therefore deny them.

4. School District No. 1 in the County of Denver

38. Defendants lack information sufficient to admit or deny the allegations of Paragraph 38 of the Complaint, and therefore deny them.

39. Defendants lack information sufficient to admit or deny the allegations of Paragraph 39 of the Complaint, and therefore deny them.

5. Pueblo County School District 70

40. Defendants lack information sufficient to admit or deny the allegations of Paragraph 40 of the Complaint, and therefore deny them.

41. Defendants lack information sufficient to admit or deny the allegations of Paragraph 41 of the Complaint, and therefore deny them.

42. Defendants lack information sufficient to admit or deny the allegations of Paragraph 42 of the Complaint, and therefore deny them.

43. Defendants lack information sufficient to admit or deny the allegations of Paragraph 43 of the Complaint, and therefore deny them.

44. Defendants lack information sufficient to admit or deny the allegations of Paragraph 44 of the Complaint, and therefore deny them.

45. Defendants lack information sufficient to admit or deny the allegations of Paragraph 45 of the Complaint, and therefore deny them.

46. Defendants lack information sufficient to admit or deny the allegations of Paragraph 46 of the Complaint, and therefore deny them.

47. Defendants lack information sufficient to admit or deny the allegations of Paragraph 47 of the Complaint, and therefore deny them.

48. Defendants lack information sufficient to admit or deny the allegations of Paragraph 48 of the Complaint, and therefore deny them.

6. Woodlin School District No. R-104

49. Defendants lack information sufficient to admit or deny the allegations of Paragraph 49 of the Complaint, and therefore deny them.

50. Defendants lack information sufficient to admit or deny the allegations of Paragraph 50 of the Complaint, and therefore deny them.

51. Defendants lack information sufficient to admit or deny the allegations of Paragraph 51 of the Complaint, and therefore deny them.

52. Defendants lack information sufficient to admit or deny the allegations of Paragraph 52 of the Complaint, and therefore deny them.

53. Defendants lack information sufficient to admit or deny the allegations of Paragraph 53 of the Complaint, and therefore deny them.

54. Defendants lack information sufficient to admit or deny the allegations of Paragraph 54 of the Complaint, and therefore deny them.

B. School District Plaintiffs

55. Defendants admit the allegations of Paragraph 55 of the Complaint.

56. Defendants admit the allegations of Paragraph 56 of the Complaint. However, Defendants deny that the School District Plaintiffs have independent standing to bring this action.

II. Defendants

57. Defendants admit the allegations of Paragraph 57 of the Complaint.

58. Defendants admit that the quoted language is contained in article IX, section 1 of the Colorado Constitution. The remaining allegations of Paragraph 58 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they contain an incomplete and inaccurate summary of article IX of the Constitution and legislation enacted pursuant thereto, which are the best evidence of their contents.

59. Defendants admit the allegations of the first sentence of Paragraph 59 of the Complaint. Defendants deny the remaining allegations of Paragraph 59 to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents.

60. Defendants admit the allegations of Paragraph 60 of the Complaint.

GENERAL ALLEGATIONS

I. The Education Clause and Local Control Clause

61. Defendants admit that article IX, section 2 of the Colorado Constitution (the Education Clause) was adopted in 1876 and that the quoted language is contained therein. The remaining allegations of Paragraph 61 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 61 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

62. The allegations of Paragraph 62 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 62 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

63. Defendants deny the allegations of the first sentence of Paragraph 63 of the Complaint. The remaining allegations of Paragraph 63 purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 63 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

64. The allegations of Paragraph 64 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 64 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

65. Defendants admit that certain of the quoted language is contained in article IX, section 15 of the Colorado Constitution. The remaining allegations of Paragraph 65 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 65 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

66. The allegations of Paragraph 66 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 66 contains an inaccurate and

incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

67. Defendants admit that the General Assembly has referenced the Education Clause in select pieces of legislation. Further answering, Defendants state that Paragraph 67 of the Complaint contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

68. Defendants deny the allegations of the first sentence of Paragraph 68 of the Complaint. Defendants admit that the quoted statutory language is contained in § 22-54-102, C.R.S. However, the remaining allegations contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

69. Paragraph 69 of the Complaint contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

II. Education Reform Legislation

70. Defendants admit that beginning in the 1990s, the state of Colorado has undertaken a comprehensive legislative transformation of the public education system and deny the remaining allegations of the first sentence of Paragraph 70 of the Complaint. The remaining allegations of Paragraph 70 contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

71. Defendants deny the allegations of the first sentence of Paragraph 71 of the Complaint. Defendants admit that the quoted statutory language appears in § 22-7-1002, C.R.S. However, the remaining allegations contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

72. Defendants admit that the quoted statutory language is contained in § 22-7-401, C.R.S. However, the remaining allegations of Paragraph 72 of the Complaint contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

73. Paragraph 73 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 73 contains an inaccurate and incomplete summary of

Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

74. Defendants admit that CAP4K was adopted in 2008 and deny the allegations of the last sentence of Paragraph 74 of the Complaint. Defendants further admit that according to the Colorado Department of Education and the Colorado Department of Higher Education “postsecondary and workforce readiness” describes knowledge, skills, and behaviors essential for high school graduates to be prepared to enter college and the workforce and to compete in the global economy and deny the remaining allegations of the second sentence of Paragraph 74. The remaining allegations contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

75. The allegations of Paragraph 75 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 75 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

76. Defendants deny the allegations of the first sentence of Paragraph 76 of the Complaint. Defendants admit that the quoted statutory language is contained in § 22-7-403, C.R.S., but deny the remaining allegations of Paragraph 76 to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents.

77. Defendants admit that the 2001 amendments to the federal Elementary and Secondary Education Act of 1965 (ESEA), known as the No Child Left Behind Act (NCLB), were signed into law on January 8, 2002. Defendants further admit that the quoted statutory language is contained in 20 U.S.C. § 6301, but deny the remaining allegations of Paragraph 77 of the Complaint to the extent that they misstate and mischaracterize ESEA and NCLB, which are the best evidence of their contents.

78. Paragraph 78 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 78 to the extent that they contain an inaccurate and incomplete summary of federal law, which is the best evidence of its contents.

79. Paragraph 79 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants

deny the allegations of Paragraph 79 to the extent that they contain an inaccurate and incomplete summary of federal law, which is the best evidence of its contents.

80. Defendants admit that the State Board adopted the Colorado Consolidated State Plan (the State Plan) in 2002. The remaining allegations of Paragraph 80 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations of Paragraph 80 to the extent that they contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents.

81. The first sentence of Paragraph 81 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they contain an inaccurate and incomplete summary of state or federal law, which is the best evidence of its contents. Defendants deny the last sentence of Paragraph 81.

82. Defendants deny the allegations of Paragraph 82 of the Complaint to the extent that they misstate and mischaracterize the State Plan, which is the best evidence of its contents.

83. Defendants deny the first sentence of Paragraph 83 of the Complaint. Defendants deny the remaining sentences of Paragraph 83 to the extent that they misstate and mischaracterize published Adequate Yearly Progress (AYP) results, which are the best evidence of their contents.

84. Defendants deny the allegations of Paragraph 84 of the Complaint to the extent that they misstate and mischaracterize published AYP results, which are the best evidence of their contents.

85. Defendants deny the allegations of Paragraph 85 of the Complaint to the extent that they misstate and mischaracterize published AYP results, which are the best evidence of their contents.

86. Defendants admit the allegations of Paragraph 86 of the Complaint.

87. Defendants admit that in 2009, the general assembly adopted the Education Accountability Act of 2009 (SB 163) and deny the allegations of the last sentence of Paragraph 87 of the Complaint. The remaining allegations of Paragraph 87 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

88. Paragraph 88 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

89. The first sentence of Paragraph 89 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents. Defendants deny the allegations of the last sentence of Paragraph 89.

90. Paragraph 90 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents.

91. Defendants deny the allegations of Paragraph 91 of the Complaint.

92. Defendants deny the allegations of Paragraph 92 of the Complaint.

93. Defendants deny the allegations of Paragraph 93 of the Complaint.

94. Defendants deny the allegations of Paragraph 94 of the Complaint.

III. The System of Public School Finance

A. The Public School Finance Act of 1994 (PSFA)

95. Defendants admit that governmental funding for Colorado school districts is derived from local taxes, state funds, and federal funds and deny the remaining allegations of Paragraph 95 of the Complaint.

96. Defendants admit the first sentence of Paragraph 96 of the Complaint. Defendants further admit that in school year 2008-09, local school district property tax and other sources contributed 36.6% of state and local PSFA funding and the state contributed 63.4%. Defendants deny the remaining allegations of Paragraph 96.

1. Total Program Funding

97. Paragraph 97 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 97 to the extent that they are an incomplete or inaccurate summary of Colorado law, which is the best evidence of its contents.

98. The first sentence of Paragraph 98 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence of Paragraph 98 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents. Therefore, Defendants deny those allegations. Defendants deny the second sentence of Paragraph 98 and admit the allegations of the last sentence of Paragraph 98.

99. Defendants deny the allegations of the first two sentences of Paragraph 99 of the Complaint. The allegations of the third sentence of Paragraph 99 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents. Defendants admit that per pupil funding levels vary among school districts. Defendants deny the remaining allegations of Paragraph 99.

100. Defendants admit the allegations of the first and last sentences of Paragraph 100 of the Complaint to the extent that they relate to funding under the PSFA. Defendants admit that the mill levy is one component of the local or district share of total program under the PSFA. Defendants deny the remaining allegations of Paragraph 100.

101. Defendants deny the allegations of Paragraph 101 of the Complaint.

2. PSFA Formula Factors

102. The first sentence of Paragraph 102 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an inaccurate or incomplete summary of the PSFA, which is the best evidence of its contents. Defendants deny the second sentence of Paragraph 102.

a. PSFA Funding for At-Risk Pupils

103. Defendants deny the allegations of Paragraph 103 of the Complaint.

104. Defendants admit that the number of at-risk pupils in Colorado has increased and deny the remaining allegations of Paragraph 104 of the Complaint.

105. Defendants deny the allegations of Paragraph 105 of the Complaint.

106. Defendants deny the allegations of Paragraph 106 of the Complaint.

107. Defendants deny the allegations of Paragraph 107 of the Complaint.

b. PSFA Funding for Preschool Education

108. The first two sentences of Paragraph 108 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they misstate or mischaracterize Colorado law, which is the best evidence of its contents. Defendants admit that CPP served 20,160 children in 2008-09 and deny the remaining allegations of Paragraph 108.

109. Defendants admit that the quoted language in Paragraph 109 of the Complaint appears in the report, which is the best evidence of its contents.

110. Defendants deny the allegations of Paragraph 110 of the Complaint.

111. Defendants deny the allegations of Paragraph 111 of the Complaint.

c. PSFA Cost of Living Funding

112. Defendants admit that the PSFA includes a “cost of living factor” but deny the remaining allegations of Paragraph 112 of the Complaint.

3. Override Funding

113. Defendants admit that the PSFA permits school districts an option to supplement their total program with additional local revenues by submitting an initiative to the electorate for approval to raise such revenues and authorizing an additional mill levy for that purpose. Defendants further admit the allegations of the third and fourth sentences of Paragraph 113 of the Complaint. The remaining allegations of Paragraph 113 misstate and mischaracterize the PSFA, which is the best evidence of its contents. Therefore, Defendants deny the remaining allegations of Paragraph 113.

114. Defendants deny the allegations of Paragraph 114 of the Complaint.

4. Summary Allegations Concerning the PSFA

115. Defendants deny the allegations of Paragraph 115 of the Complaint.

116. Defendants deny the allegations of Paragraph 116 of the Complaint.

117. Defendants deny the allegations of Paragraph 117 of the Complaint.

B. Categorical Program Funding

118. The first two sentences of Paragraph 118 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are inconsistent with Colorado law, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 118.

119. Defendants deny the allegations of Paragraph 119 of the Complaint.

1. The English Language Proficiency Act

120. Defendants deny the allegations of the first and third sentences of Paragraph 120 of the Complaint. Defendants admit that children whose dominant language is not English are among the fastest growing populations in the public schools, but deny the remaining allegations of the second sentence of Paragraph 120. Defendants admit the allegations of the fourth sentence of Paragraph 120. The remaining allegations of Paragraph 120 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the remaining allegations of Paragraph 120 misstate and mischaracterize Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

121. Paragraph 121 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants admit that certain of the quoted statutory language is contained in § 22-24-102, C.R.S., but deny the allegations of Paragraph 121 to the extent that they contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

122. Paragraph 122 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants

deny the allegations of Paragraph 122 to the extent that they contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

123. Defendants admit the allegations of the third sentence and deny the remaining allegations of Paragraph 123 of the Complaint.

124. Defendants deny the allegations of Paragraph 124 of the Complaint.

125. Defendants deny the allegations of Paragraph 125 of the Complaint.

2. Education of Children with Disabilities

126. Defendants admit that the ECEA and IDEA require school districts to provide special education programs to all children with disabilities. Defendants deny the remaining allegations of Paragraph 126 of the Complaint.

127. The first two sentences and last sentence of Paragraph 127 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of those sentences to the extent that they are an incomplete and inaccurate summary of the referenced statutes and constitutional provision, which are the best evidence of their contents. The third sentence is an inaccurate and incomplete summary of a statement by the CDE, which is the best evidence of its contents, and therefore Defendants deny those allegations.

128. Defendants admit the allegations of the first sentence and deny the remaining allegations of Paragraph 128 of the Complaint.

129. Defendants admit the allegations of the first sentence of Paragraph 129 of the Complaint. The remaining allegations of Paragraph 129 misstate and mischaracterize CDE's report. Defendants deny the allegations of Paragraph 129 to the extent that they are inconsistent with CDE's facts and figures, which are the best evidence of their contents.

130. Paragraph 130 of the Complaint characterizes a 2000 study of special education, which is the best evidence of its contents, and Defendants deny all characterizations to the extent they contradict the study.

131. Defendants deny the allegations of Paragraph 131 of the Complaint.

132. Defendants deny the allegations of Paragraph 132 of the Complaint.

3. Gifted and Talented Education

133. Paragraph 133 of the Complaint is an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

134. Defendants deny the allegations of the first sentence of Paragraph 134 of the Complaint. Defendants admit the allegations of the second sentence of Paragraph 134. Defendants admit that funds may be used for salaries for teachers, staff development and training, and activities materials and equipment associated with the education of gifted and talented students and deny the remaining allegations of Paragraph 134.

135. Defendants deny the allegations of Paragraph 135 of the Complaint.

4. Transportation Costs

136. Defendants deny the allegations of the first and third sentences of Paragraph 136 of the Complaint. Defendants admit the allegations of the second sentence of Paragraph 136.

137. Defendants admit the allegations of the first sentence of Paragraph 137 of the Complaint and further admit that the state's contribution for transportation in fiscal year 2008-09 was \$49.6 million. Defendants deny the remaining allegations of Paragraph 137.

138. Defendants deny the allegations of Paragraph 138 of the Complaint.

5. Capital Construction Funding

139. The allegations of Paragraph 139 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the allegations constitute an incomplete and inaccurate summary of the law, which is the best evidence of its contents, and therefore Defendants deny the allegations.

140. Defendants deny the allegations of Paragraph 140 of the Complaint.

141. The first two sentences of Paragraph 141 of the Complaint are an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Answering the third

and fourth sentences of Paragraph 141, Defendants admit that property taxes vary by school district and deny the remaining allegations.

142. The first sentence of Paragraph 142 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 142.

143. Defendants deny the allegations of the first two sentences of Paragraph 143 of the Complaint to the extent that they are incomplete and inaccurate summaries of the referenced reports, which are the best evidence of their contents. Defendants admit the allegations of the third sentence of Paragraph 143. Defendants admit the allegations of the fourth sentence to the extent that the fourth sentence alleges that the State has released a statewide assessment and deny the remaining allegations of that sentence.

144. The first sentence of Paragraph 144 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they misstate and mischaracterize the Constitution, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 144.

145. Defendants deny the allegations of Paragraph 145 of the Complaint.

146. Defendants deny the allegations of Paragraph 146 of the Complaint.

147. The first sentence of Paragraph 147 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 147.

IV. Constitutional Provisions Affecting School Finance

148. Defendants admit that TABOR was effective as of December 31, 1992 and that the Gallagher Amendment was approved in 1982. Defendants deny the remaining allegations of Paragraph 148 of the Complaint.

149. Defendants deny the allegations of Paragraph 149 of the Complaint.

150. Defendants admit that Amendment 23 was adopted by initiative on November 7, 2000. The remaining allegations of Paragraph 150 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they misstate and mischaracterize the Constitution and legislation, which are the best evidence of their contents.

151. Paragraph 151 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 151.

A. The Taxpayers Bill of Rights (TABOR)

152. Paragraph 152 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 152 to the extent that they are an incomplete and inaccurate summary of TABOR, which is the best evidence of its contents.

153. Paragraph 153 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 153 to the extent that they are an incomplete and inaccurate summary of TABOR, which is the best evidence of its contents.

154. Paragraph 154 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 154 contains an incomplete and inaccurate summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 154.

155. The first three sentences of Paragraph 155 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 155 to the extent that they are an incomplete and inaccurate summary of pre-existing Colorado law, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 155.

156. Paragraph 156 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 156 to the extent that they are an incomplete and inaccurate summary of pre-existing Colorado law, which is the best evidence of its contents.

157. Paragraph 157 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 157 to the extent that they are an incomplete and inaccurate summary of TABOR, which is the best evidence of its contents.

158. The first sentence of Paragraph 158 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of the first sentence of Paragraph 158 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents. Answering the second sentence of Paragraph 158, Defendants admit that in 2008-09, school district mill levies for their PSFA total program ranged from 1.68 to the statutory maximum of 27, with a statewide average of 20.817, and deny the remaining allegations.

159. There is no Paragraph 159 of the Complaint.

160. Paragraph 160 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 160 is an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

161. Defendants admit the allegations of the first two sentences of Paragraph 161 of the Complaint. Answering the last sentence of Paragraph 161, Defendants admit that the state share of public education revenues grew and that the local share dropped correspondingly and deny the remaining allegations.

162. Defendants deny the allegations of Paragraph 162 of the Complaint.

163. Paragraph 163 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants state that Paragraph 163 misstates and mischaracterizes the Constitution, which is the best evidence of its contents.

164. The first two sentences of Paragraph 164 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the allegations consist of an incomplete and inaccurate summary of the law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 164.

165. Defendants deny the allegations of Paragraph 165 of the Complaint.

B. The Gallagher Amendment

166. Paragraph 166 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 166 misstates and mischaracterizes the cited provision, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 166.

167. Defendants deny the allegations of the first sentence of Paragraph 167 of the Complaint. The remaining sentences of Paragraph 167 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an incomplete and inaccurate summary of the Gallagher Amendment, which is the best evidence of its contents.

168. The first sentence of Paragraph 168 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an incomplete and inaccurate summary of the Gallagher Amendment, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 168.

169. Paragraph 169 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants state that Paragraph 169 misstates and mischaracterizes the Constitution, which is the best evidence of its contents.

C. Amendment 23

170. Defendants admit the allegations of the first sentence of Paragraph 170 of the Complaint. The second and third sentences of Paragraph 170 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an incomplete and inaccurate summary of the Constitution, which is the best evidence of its contents.

171. The first two sentences of Paragraph 171 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are incomplete and inaccurate summaries of the Constitution and legislative provisions, which are the best evidence of their contents. Defendants lack knowledge sufficient

to admit or deny Plaintiffs' speculation as to the intent of the general assembly and therefore deny the allegations of the third sentence of Paragraph 171.

172. Defendants admit that the Colorado Constitution, article IX, section 3 provides, in relevant part, that “[d]istributions of interest and other income [from the public school fund] for the benefit of public schools provided for in this article IX shall be in addition to and not a substitute for other moneys appropriated by the general assembly for such purposes.” Defendants lack information sufficient to admit or deny the remaining allegations of Paragraph 172 of the Complaint.

173. Defendants admit that in November 2005, Colorado voters passed the Colorado State Spending Act, “Referendum C.” To the extent that the remaining allegations of Paragraph 173 of the Complaint state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations to the extent that they misstate and mischaracterize the law, which is the best evidence of its contents.

174. Defendants deny the allegations of Paragraph 174 of the Complaint.

FIRST CLAIM FOR RELIEF
Denial of the Constitutional Right to a Quality Education

175. Defendants incorporate herein all of the preceding averments.

176. Defendants deny the allegations of Paragraph 176 of the Complaint.

177. Defendants deny the allegations of Paragraph 177 of the Complaint.

178. Defendants deny the allegations of Paragraph 178 of the Complaint.

179. Defendants deny the allegations of Paragraph 179 of the Complaint.

180. Paragraph 180 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations as an incomplete and inaccurate summary of the Constitution, which is the best evidence of its contents.

181. Defendants deny the allegations of Paragraph 181 of the Complaint.

182. The first sentence of Paragraph 182 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they misstate and

mischaracterize the Constitution, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 182.

183. Defendants deny the allegations of Paragraph 183 of the Complaint.

184. Defendants deny the allegations of Paragraph 184 of the Complaint.

185. Defendants deny the allegations of Paragraph 185 of the Complaint.

186. Defendants deny the allegations of Paragraph 186 of the Complaint.

187. Defendants deny the allegations of Paragraph 187 of the Complaint.

188. Defendants deny the allegations of Paragraph 188 of the Complaint.

189. Defendants deny the allegations of Paragraph 189 of the Complaint.

190. Defendants deny the allegations of Paragraph 190 of the Complaint.

191. Defendants deny the allegations of Paragraph 191 of the Complaint.

192. Defendants deny the allegations of Paragraph 192 of the Complaint.

193. Defendants deny the allegations of Paragraph 193 of the Complaint.

SECOND CLAIM FOR RELIEF

Violation of the Constitutional Authority to Control Instruction

194. Defendants incorporate herein all of the preceding averments.

195. Defendants deny the allegations of Paragraph 195 of the Complaint.

196. Defendants deny the allegations of Paragraph 196 of the Complaint.

GENERAL DENIAL

Defendants deny all allegations not specifically admitted.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

2. Plaintiffs' Complaint fails to join necessary and indispensable parties.

3. Plaintiffs lack standing to the extent they assert claims on behalf of "the children of the State of Colorado" or any other person or entity not named as a Plaintiff. Plaintiffs lack standing to the extent that they assert claims on behalf of groups of parents or students of which they are not a part.

4. The School District Plaintiffs lack standing to bring this action.

5. Plaintiffs' claims seek an unconstitutional remedy.

6. Plaintiffs' claims and requested relief violate the separation of powers.

7. Defendants reserve the right to assert additional affirmative defenses.

WHEREFORE, Defendants request that the Court enter judgment in their favor and against Plaintiffs on the Amended Complaint, award Defendants their costs and attorney's fees as provided by law, and enter such other relief to Defendants as the Court deems just and appropriate.

Respectfully submitted this 30th day of April, 2010.

JOHN W. SUTHERS
Attorney General

s/ Carey Taylor Markel

MONICA MÁRQUEZ, 28950

Deputy Attorney General

ANTONY B. DYL, 15968*

Senior Assistant Attorney General

CAREY TAYLOR MARKEL, 32987*

Senior Assistant Attorney General

ANN H. CISNEROS, 32547*

Assistant Attorney General

ERICA WESTON, 35581*

Assistant Attorney General

NICHOLAS P. HEINKE, 38738*

Assistant Attorney General

ATTORNEYS FOR DEFENDANTS

*Counsel of Record

*Original signature of Carey Taylor Markel is
on file at the Office of the Colorado Attorney
General*

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER TO PLAINTIFFS' AMENDED COMPLAINT** upon all parties herein by electronically filing through LexisNexis courtlink or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 30th day of April, 2010 addressed as follows:

Alexander Halpern
Alexander Halpern LLC
1426 Pearl Street, Suite 201
Boulder, Colorado 80302

Kathleen J. Gebhardt
Kathleen J. Gebhardt LLC
1426 Pearl Street, Suite 201
Boulder, Colorado 80302

s/ Jeannine Moore
Jeannine Moore

*Original Signature of Jeannine Moore is on
file at the Office of the Colorado Attorney
General*